AMENDMENTS TO THE DRAWINGS

The attached replacement sheets of drawings include replacement Figures 1-17 that correspond to and replace original Figures 1-17, respectively.

REMARKS

I. Objections to the Drawings

The Office Action mailed August 4, 2009 objected to the drawings. Applicant has submitted replacement drawings for all of the Figures. Therefore, Applicant respectfully submits that the objections to the drawings have been overcome.

II. Information Disclosure Statement

The Office Action states that a non-patent literature publication cited in the Information Disclosure Statement was not considered. Applicant referred to the film "Donnie Darko," which was cited in the International Preliminary Examination Report (IPER) for a corresponding PCT international application. Applicant respectfully refers the Examiner to the IPER, which was filed on March 24, 2005 along with the present Application, and the statements therein regarding the reference D3 (Donnie Darko DVD).

III. Claim Rejections – 35 U.S.C. § 101

In the Office Action, claims 1-28 were rejected pursuant to 35 U.S.C. § 101 as lacking sufficient ties to a machine, article of manufacture, or a composition of matter. (Office Action, at 3, ¶ 4.) Claim 59 was rejected pursuant to 35 U.S.C. § 101 as being directed toward non-statutory subject matter, *i.e.*, a computer program. (Office Action, at 3, ¶ 5.) Applicant respectfully traverses the rejections.

As the Office Action noted, the recent Federal Circuit decision, *In re Bilski*, clarified the scope of patent-eligible subject matter. *In re Bilski*, No. 2007-1130, 2008 WL 4757110 (Fed. Cir. Oct. 30, 2008). The Federal Circuit held that the "machine-or-transformation" test is the proper test. *Id.* at 14-15. Therefore, a claim that is tied to a particular machine or brings about a particular transformation of a particular article and

does not pre-empt all uses of a fundamental principle in any field but rather is limited to a particular use/specific application is patentable. *Id.* at 16; 24-26.

Applicant has cancelled the previous claims and added new claims 61-97. Applicant respectfully submits that the new claims satisfy the "machine-or-transformation" test, and that the rejections pursuant to 35 U.S.C. § 101 have been overcome.

IV. Specification

The Office Action objected to claim 11 as lacking adequate description. (Office Action, at 4, ¶ 6.) Applicant has cancelled claim 11. Therefore, Applicant respectfully submits that the objection to the specification has been rendered moot.

V. Claim Rejections – 35 U.S.C. § 112

The Office Action made numerous rejections to claims 1-60 pursuant to 35 U.S.C. § 112. (Office Action, at 4-6, ¶ 9-15.) Applicant has cancelled claims 1-60. Applicant respectfully submits that new claims 61-97 satisfy 35 U.S.C. § 112.

For instance, new independent claim 61 positively recites that the graphical representation means forms "a graphical representation of a proportion that each of the four primary moods contributes to the selected mood state." Applicant respectfully submits that the subject matter of claim 61 is described in a fashion that enables one skilled in the art to make and/or use the invention.

The Office Action submits that it is unclear "how a person should go about accurately quantifying these emotions." (Office Action, at 5.) However, as explained in more detailed below, the written description of the present Application details that a person using the system is provided with information about the four primary moods and is asked to focus on a particular subject (family, school, etc.) before using the graphical

representation means to quantify how they regard the degree to which each primary mood makes up their overall mood state concerning the subject. The extensive description, for example at pages 21-35 of the present Application, and drawings provide enablement of the invention as claimed.

VI. Claim Rejections – 35 U.S.C. § 102

The Office Action rejected claims 1-7, 29-36, 39-41,59, and 60 under 35 U.S.C. 102(e) as being anticipated by Glenn et al. (U.S. Patent No. 6,607,390). Applicant respectfully traverses the rejections.

The present Application permits, *inter alia*, a user to select a particular subject, such as from a menu. After which, various graphical and/or other input selections entered by the user may be accepted and used to form a graphical depiction of a mood state of the user that is associated with the selected subject. For instance, a number of primary moods may be pre-determined. User operation of an input device may allow the user to enter a user-identified proportional that each of the primary moods contributes to the mood state of the user associated with the selected subject.

As shown below in Figure 9 of the present Application, in one embodiment, the primary moods may include fear, anger, sad, and happy. The user may graphically depict a proportion that each of the primary moods contributes to the mood state of the user that is associated with a user-selected subject – in the example shown, the user-selected subject is how the user now feels about his or her friends. The user may graphically or otherwise alter the proportion that each primary mood contributes to the mood state of the user, such as by adjusting the size of each slice of the "MoodPie" depicted in Figure 9 below.

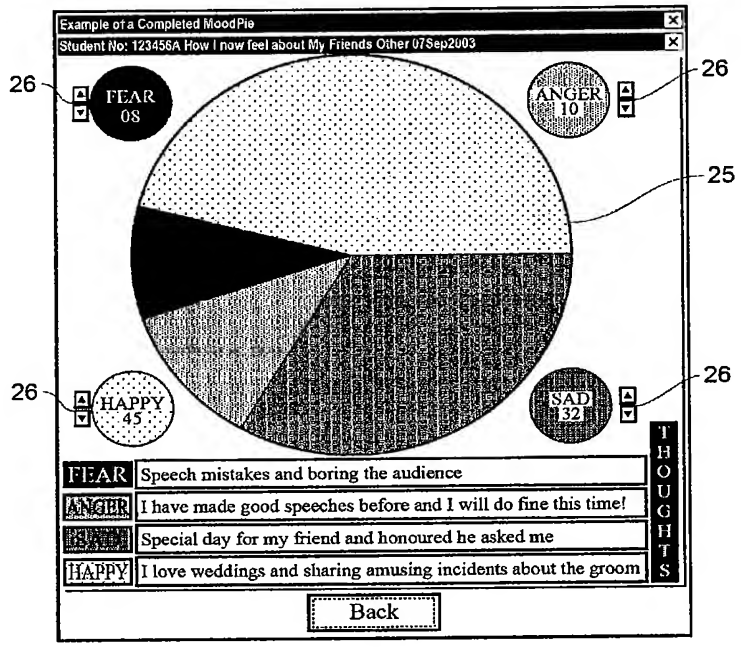

Figure 9 of the Present Application

On the other hand, as discussed in the background of the present Application, Glenn et al. "relies on the individual entering a number between 0 and 100 on a visual display analogue scale (VAS) that is indicative of their mood over say, the previous 24 hours. The most extreme feelings of depression and mania the individual has ever experienced define the anchor points of this scale. While providing individuals with a means of graphically representing their mood, this does not rely on anything but a subjective analysis by the individual of their *overall mood state* and does not provide a breakdown of the various feelings and emotions of the individual that have caused that mood determination by the individual." (Application, Para. 10.) (emphasis added)

The Office Action notes that "FIG. 10 [of Glenn et al.] shows an example of the mood dialog box for a female with VAS scale 1001 for entering mood." (Office Action, at 7, ¶ 18.) Figure 10 of Glenn et al. is reproduced below for the convenience of the Examiner.

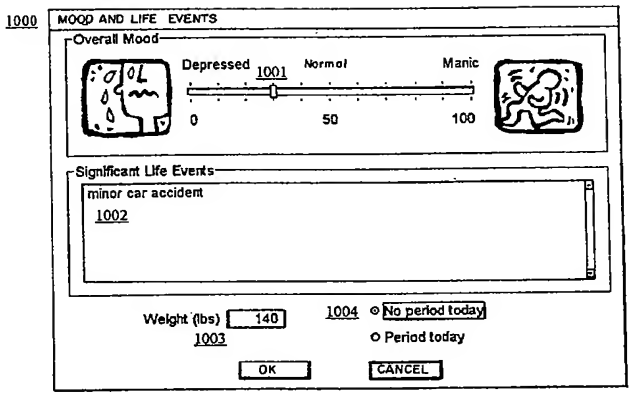

Figure 10 of Glenn et al.

Similar to the background of the present Application, the Office Action acknowledges that with Glenn et al., "[m]ood data is entered using a VAS scale between 0 and 100. The most extreme feelings of depression and mania the patient has ever experienced define the anchor points. The patient slides the scale to the number that best represents mood over the past 24 hours, in relation to these anchor points, 6:24-35; sliding a scale is understood to be using a dimension to represent a proportion between 0 and 100." (Office Action, at 7-8, ¶ 20.) In sum, Glenn et al. is an example of rudimentary bipolar mood charting.

A. Independent Claim 61

New independent claim 61 recites "a graphical representation means capable of manipulation by the user to allow the user to graphically represent each of the four primary moods and also form a graphical representation of a proportion that each of the four primary moods contributes to the selected mood state."

Noted above, the portions of Glenn et al. cited in the Office Action disclose a sliding bar. However, Glenn et al. does not describe nor suggest the system of claim 61. The present Application is predicated on the discovery by the inventor and understanding

that "mood state" can be properly understood as a blend of the four primary moods defined in the Application. Claim 61 specifically requires the user to manipulate a "graphical representation means" so as to graphically represent the proportion that each of the four primary moods contributes to the mood state.

On the other hand, there is no hint in the citation to Glenn et al. of the criticality to focus on the four primary moods as determined by the present inventor. Instead, as mentioned, Glenn et al. asks a user to indicate a number between the extremes of "depressed" and "manic". Such a system does not allow a user to first focus on their mood state and then use the system to graphically represent the proportion of each of the mentioned four primary moods contributes (in their view) to their selected mood state. As such, there are significant differences between the citation to Glenn et al. and the system and method as defined herein. Further, the cited portions of Glenn et al. do not describe a system that allows comparison of the generated graphical representations over time with other graphical representations.

Therefore, Applicant respectfully submits that claim 61 is allowable. Claims 62-72 depend upon independent claim 61 and should be allowable at least for the same reasons.

Additionally, claim 66 recites "a graphical input screen that allows the user to graphically represent the proportion that each of the four primary moods contributes to the selected mood state," and claim 67 further recites that "the graphical input screen comprises a shape having a pre-defined area that is able to be colored in with the colors assigned to each of the four primary moods by the user in proportion that each of the four primary moods contributes to the selected mood state." Glenn et al. does not disclose

coloring in a shape with various colors in amounts that represent a proportion that a corresponding primary mood contributes to a mood state.

B. Independent Claim 73

New independent claim 73 recites "displaying a graphical input screen on the display, the graphical input screen including a shape having a pre-defined area and configured to accept input from the user via the input device to define a mood state associated with the user-selected subject, the mood state comprising a blend of four primary moods; [and] accepting a user-identified portion of the pre-defined area for each of the four primary moods, each user-identified portion of the pre-defined area being entered by the user using the input device and is representative of a proportion of a corresponding one of the four primary moods that the user identifies as contributing to the mood state associated with the user-selected subject."

The cited portions of Glenn et al. do not disclose a mood state comprising a blend of four primary moods nor accepting a user-identified portion of a pre-defined area representative of a proportion that a corresponding primary mood contributes to the mood state.

Applicant respectfully submits that claim 73 is allowable. Claims 74-81 depend upon independent claim 73 and should be allowable for at least the same reasons.

C. Independent Claim 82

New independent claim 82 recites "for the user-selected subject, accepting a user-adjustable setting for each of four primary moods that together represent a mood state of the user associated with the user-selected subject, each user-adjustable setting representing a user-identified proportion that a corresponding one of the four primary

moods individually contributes to the mood state of the user associated with the user-selected subject, as identified by the user."

For the reasons stated above, Applicant respectfully submits that claim 82 is allowable. Claims 83-87 depend upon independent claim 82 and should be allowable for at least the same reasons.

Additionally, claim 84 recites "using the scores allocated to generate a second graphical representation of the mood state of the user associated with the user-selected subject, the second graphical representation comprising a mood balance tower having a first balanced arm and a second balanced arm." Glenn et al. does not disclose a graphical representation having a first and a second balanced arm.

D. Independent Claim 88

New independent claim 88 recites "displaying a graphical input screen on the display that allows the user to graphically represent a mood state associated with the user-selected subject, the mood state comprising a blend of four primary moods; [and] accepting a user-identified proportion for each of the four primary moods that is entered by the user via the graphical input screen, each user-identified proportion representing a proportion, identified by the user, that a corresponding one of the four primary moods contributes to the mood state associated with the user-selected subject."

For the reasons stated above, Applicant respectfully submits that claim 88 is allowable. Claims 89-97 depend upon independent claim 88 and should be allowable for at least the same reasons.

VII. Claim Rejections – 35 U.S.C. § 103

The Office Action rejected claims 8-28, 37, 38, and 42-58 under 35 U.S.C. 103(a) as being obvious in view of Glenn et al. Applicant respectfully traverses the rejections.

As detailed above with respect to Figure 10, Glenn et al. discloses a sliding scale representing a conventional VAS. (Glenn et al., 6:25-36; 2:47-64 ("Two methodologies are currently used for daily patient self-reporting of mood...The latter uses a 100-mm visual analogue scale (VAS) between the mood extremes of mania and depression on which the patient marks mood proportionately").) Noted above, Applicant is not attempting to claim a conventional VAS.

VIII. Descriptive Material Arguments Not Supported by Case Law Cited

Finally, Applicant respectfully disagrees with the "non-functional descriptive material" argument in the Office Action. (Office Action, at 12-13, ¶ 36.) The Office Action relies on *Lowry*, in which the Federal Circuit expressly stated:

> More than mere abstraction, the data structures are specific electrical or magnetic structural elements in a memory. According to Lowry, the data structures provide tangible benefits: data stored in accordance with the claimed data structures are more easily accessed, stored, and erased. Lowry further notes that, unlike prior art data structures, Lowry's data structures simultaneously represent complex data accurately and enable powerful nested operations. In short, Lowry's data structures are physical entities that provide increased efficiency in computer operation. They are not analogous to printed matter. The Board is not at liberty to ignore such limitations.

In re Lowry, 32 USPQ2d 1031, 1034 (Fed. Cir. 1994). The Federal Circuit concluded that the "Board erred by denying patentable weight to Lowry's data structure limitations. This court reverses the Board's determination that claims 1 through 19 are obvious." *Id.* at 1035.

In *Ngai*, also cited by the Office Action, the applicant was attempting to the claim the content of written instructions for a kit for normalizing and amplifying an RNA population. *In re Ngai*, 70 USPQ2d 1862, 1863 (Fed. Cir. 2004). However, unlike in *Ngai*, the previous claims rejected as descriptive material are not attempting to claim the

content of written instructions. Rather, under the rationale the Federal Circuit espoused in *Lowry*, the previous and current claims are entitled to patentable weight. As the Federal Circuit noted, "[t]he Board is not at liberty to ignore such limitations." *Id.* Thus, the "descriptive material" rejections in the Office Action are not supported by the case law cited.

SUMMARY

Applicant respectfully submits that all of the pending claims are in condition for allowance and seeks allowance thereof. If for any reason the Examiner is unable to allow the Application but believes that an interview would be helpful to resolve any issues, the Examiner is respectfully requested to call the undersigned at (312) 321-4277.

Respectfully submitted,

/Timothy J. Le Duc/
Timothy J. Le Duc
Registration No. 54,745
Attorney for Applicant

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4200

Dated: February 3, 2010